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In re the Matter of: ) Case No.: 08-378  
)  
State of New Hampshire Banking )  
)  
Department, ) Order to Show Cause  
)  
Petitioner, ) and  
)  
and ) Cease and Desist Order  
)  
First Call Mortgage Company, Inc., )  
)  
Kathleen L. Donovan, Carl D. McFadden, )  
)  
George Vanderheiden, Peter S. Lynch and )  
)  
Carolyn A. Lynch as Joint Tenants, )  
)  
James Arthur Lesmerises, David Allen )  
)  
Kesler, Dennis Wright, )  
)  
Respondents )  
)  
)  
)  
)  
)  
)

This Order commences an adjudicative proceeding under the provisions of RSA 397-A, RSA 541-A, BAN 200 and JUS 800.

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:18, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue a

1 complaint setting forth charges whenever the Department is of the opinion  
2 that the licensee or person over whom the Department has jurisdiction is  
3 violating or has violated any provision of RSA Chapter 397-A, rule or order  
4 thereunder.

5 Pursuant to RSA 397-A:18 II, the Banking Department of the State of New  
6 Hampshire (hereinafter the "Department") has the authority to issue and cause  
7 to be served an order requiring any person engaged in any act or practice  
8 constituting a violation of RSA 397-A or any rule or order thereunder, to  
9 cease and desist from violations of RSA 397-A.

10 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or rescind  
11 such orders as are reasonably necessary to comply with the provisions of the  
12 Chapter.

13 Pursuant to RSA 397-A:21, the Commissioner has the authority to  
14 suspend, revoke or deny any license and to impose administrative penalties of  
15 up to \$2,500.00 for each violation of New Hampshire banking law and rules.

16 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct  
17 that is or may be an unfair or deceptive act or practice under RSA 358-A and  
18 exempt under RSA 358-A:3, I or that may violate any of the provisions of  
19 Titles XXXV and XXXVI and administrative rules adopted thereunder. The  
20 Commissioner may hold hearings relative to such conduct and may order  
21 restitution for a person or persons adversely affected by such conduct. The  
22 Commissioner may utilize all remedies available under the Act.

23 **NOTICE OF RIGHT TO REQUEST A HEARING**

24 The above named Respondents have the right to request a hearing on this  
25 Order to Show Cause and Cease and Desist Order, as well as the right to be  
represented by counsel at each Respondent's own expense. All hearings shall  
comply with RSA 541-A. Any such request for a hearing shall be in writing, and  
signed by the Respondent or the duly authorized agent of the above named

Respondent, and shall be delivered either by hand or certified mail, return receipt requested, to the Banking Department, State of New Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301.

Such hearings will be scheduled within 10 days of the request. Within 20 days of the date of any such hearing, the Commissioner shall issue a further order either vacating this Order or making it permanent as the facts require. All hearings shall comply with RSA 541-A. If the Respondent fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against the Respondents upon consideration of the Order to Show Cause and Cease and Desist Order, the allegations of which may be deemed to be true.

If any of the above named Respondents fails to request a hearing within 30 calendar days of receipt of such order or reach formal settlement with the Department within that time frame, then such person shall likewise be deemed in default, and the orders shall, on the thirty-first day, become permanent, and shall remain in full force and effect until and unless later modified or vacated by the commissioner, for good cause shown.

**STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF**

The Staff Petition dated September 24, 2008 (a copy of which is attached hereto) is incorporated by reference hereto.

**ORDER**

WHEREAS, finding it necessary and appropriate and in the public interest, and consistent with the intent and purposes of the New Hampshire banking laws, and

WHEREAS, finding that the allegations contained in the Staff Petition, if proved true and correct, form the legal basis of the relief requested,

1 It is hereby ORDERED, that:

- 2 1. Respondent First Call Mortgage Company, Inc. ("Respondent  
3 First Call Mortgage") shall show cause why penalties in the  
4 amount of \$767,500.00 should not be imposed against it  
5 individually and therefore, jointly and severally for each of  
6 the individual penalties for each remaining Respondent;
- 7 2. Respondent Kathleen L. Donovan ("Respondent Donovan") shall  
8 show cause why penalties in the amount of \$767,500.00 should  
9 not be imposed against her personally and therefore, jointly  
10 and severally for each of the individual penalties for each  
11 remaining Respondent;
- 12 3. Respondent Carl D. McFadden ("Respondent McFadden") shall  
13 show cause why penalties in the amount of \$767,500.00 should  
14 not be imposed against him personally and therefore, jointly  
15 and severally for each of the individual penalties for each  
16 remaining Respondent;
- 17 4. Respondent George Vanderheiden ("Respondent Vanderheiden")  
18 show cause why penalties in the amount of \$85,000.00 should  
19 not be imposed against him personally and therefore, jointly  
20 and severally for each of the individual penalties for each  
21 remaining Respondent;
- 22 5. Respondent Peter S. Lynch and Carolyn A. Lynch as joint  
23 tenants ("Respondent Mr. and Mrs. Lynch") shall show cause why  
24 penalties in the amount of \$85,000.00 should not be imposed  
25 against them personally and therefore, jointly and severally  
for each of the individual penalties for each remaining  
Respondent;
6. Respondent James Arthur Lesmerises ("Respondent Lesmerises")  
shall show cause why penalties in the amount of \$47,500.00

1           should not be imposed against him personally and therefore,  
2           jointly and severally for each of the individual penalties  
3           for each remaining Respondent;

4       7. Respondent David Allen Kesler ("Respondent Kesler") shall  
5           show cause why penalties in the amount of \$70,000.00 should  
6           not be imposed against him personally and therefore, jointly  
7           and severally for each of the individual penalties for each  
8           remaining Respondent;

9       8. Respondent Dennis Wright ("Respondent Wright") shall show  
10           cause why penalties in the amount of \$85,000.00 should not be  
11           imposed against him personally and therefore, jointly and  
12           severally for each of the individual penalties for each  
13           remaining Respondent;

14       9. The above named Respondents shall show cause why, in addition  
15           to the penalties listed in paragraphs 1 through 8 above,  
16           Respondents shall show cause why a refund should not be given  
17           of any and all commissions and application fees received or  
18           charged from consumers from loans processed through the  
19           Portsmouth, NH branch office when it was unlicensed;

20       10. The above named Respondents shall show cause why, in addition  
21           to the penalties listed in paragraphs 1 through 9 above,  
22           Respondent First Call Mortgage should not refund the yield  
23           spread premium of \$7,297.50 charged to Consumer A but not  
24           disclosed;

25       11. The above named Respondents shall show cause why, in addition  
          to the penalties listed in paragraphs 1 through 10 above,  
          Respondent First Call Mortgage should not refund the \$89.00  
          duplicate recording fee charged to Consumer F; and

12. The above named Respondents shall cause why, in addition to the penalties listed in paragraphs 1 through 11 above, Respondent First Call Mortgage's license should not be revoked.

It is hereby further ORDERED that:

13. In addition to the \$7,297.50 due Consumer A, the \$89 due Consumer F, and the refund due consumers from the unlicensed Portsmouth branch, the \$760,000.00 administrative penalty for each Respondent shall be immediately paid;

14. The Respondents shall immediately **Cease and Desist** from all violations of New Hampshire law and the rules promulgated thereunder; and

15. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties imposed upon the defaulting Respondents(s).

SIGNED,

Dated: 9/24/08

/ S /

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PETER C. HILDRETH  
BANK COMMISSIONER

State of New Hampshire Banking Department

In re the Matter of: ) Case No.: 08-378  
)  
State of New Hampshire Banking ) Staff Petition  
)  
Department, )  
)  
Petitioner, ) September 24, 2008  
)  
and )  
)  
First Call Mortgage Company, Inc., )  
)  
Kathleen L. Donovan, Carl D. McFadden, )  
)  
George Vanderheiden, Peter S. Lynch and )  
)  
Carolyn Lynch as Joint Tenants, James )  
)  
Arthur Lesmerises, David Allen Kesler, )  
)  
and Dennis Wright, )  
)  
Respondents )  
)  
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**I. STATEMENT OF ALLEGATIONS**

The Staff of the Banking Department, State of New Hampshire (hereinafter "Department") alleges the following facts:

**Facts Common on All Counts:**

1. Respondent First Call Mortgage Company, Inc. (hereinafter "Respondent First Call Mortgage") has been licensed as a Mortgage Banker since December 10, 2003.
2. Respondent Kathleen L. Donovan (hereinafter "Respondent Donovan") is, or was at all relevant times, Chief Operating Officer of

Respondent First Call Mortgage.

3. Respondent Donovan was, until on or about August 24, 2007, a 5% owner of Respondent First Call Mortgage.

4. Respondent Carl D. McFadden (hereinafter "Respondent McFadden") is, or was at all relevant times, President and Chief Executive Officer of Respondent First Call Mortgage.

5. Respondent McFadden was, until on or about August 24, 2007, a 95% owner of Respondent First Call Mortgage.

6. Respondent McFadden, as of August 24, 2007, is a 50% owner of Respondent First Call Mortgage.

7. Respondent George Vanderheiden (hereinafter "Respondent Vanderheiden"), as of August 24, 2007, is a 25% owner of Respondent First Call Mortgage.

8. Respondent Peter S. Lynch and Carolyn A. Lynch, as joint tenants (hereinafter "Respondent Mr. and Mrs. Lynch"), as of August 24, 2007, is a 13% owner of Respondent First Call Mortgage.

9. The remaining owners are minority owners and do not fall within the definition of Principal Owner as defined in RSA Chapter 397-A.

10. On or about March 26, 2007, the Department approved Respondent James Arthur Lesmerises (hereinafter "Respondent Lesmerises") as Branch Manager for Respondent First Call Mortgage located at 264 South River Road in Bedford, NH 03110.

11. Respondent Lesmerises allegedly ceased operating in his capacity as Branch Manager in July 2007 and was no longer employed by



Respondent First Call Mortgage in any capacity since January 6, 2008.

12. Respondent Dennis Wright (hereinafter "Respondent Wright") is allegedly the acting Branch Manager for the 264 South River Road, Bedford, NH 03110 branch office for Respondent First Call Mortgage.

13. Since on or about March 7, 2007, Respondent David Kesler (hereinafter "Respondent Kesler") has been the Branch Manager for the 155 Fleet Street, Suite 307, Portsmouth, NH 03801 branch office for Respondent First Call Mortgage.

14. References to Respondents are made throughout the Staff Petition for ease of reference; however:

a. Respondent Vanderheiden and Respondent Mr. and Mrs. Lynch are only included in violations occurring after August 24, 2007;

b. Respondent Kesler is only included in violations occurring after March 7, 2007;

c. Respondent Wright is only included in violations occurring after January 6, 2008; and

d. Respondent Lesmerises is only included in violations occurring between March 26, 2007 and January 6, 2008.

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

Safeguarding Customer Information, 16 C.F.R. Section 314.3 via RSA 397-

A:2,III (1 Count):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

Safeguarding Customer Information, 16 C.F.R. Section 314.4(a) via RSA 397-

A:2,III (1 Count):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

Safeguarding Customer Information, 16 C.F.R. Section 314.4(b) via RSA 397-

A:2,III (1 Count):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

Safeguarding Customer Information, 16 C.F.R. Section 314.4(c) via RSA 397-

A:2,III (1 Count):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

Safeguarding Customer Information, 16 C.F.R. Section 314.4(d) via RSA 397-

A:2,III (1 Count):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for

Safeguarding Customer Information, 16 C.F.R. Section 314.4(e) via RSA 397-

A:2,III (1 Count):

Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (6

Counts):

Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (2

Count):

15. Paragraphs 1 through 14 are hereby realleged as fully set forth herein.

16. The above named Respondents have failed to maintain a comprehensive information security program.

17. The above named Respondents are required to develop, implement, and maintain a comprehensive information security program (hereinafter "Information Security Program" that is written in one or more readily accessible parts and contains administrative, technical,

1           and physical safeguards.

2           18. This Information Security Program was required to be implemented by  
3           May 23, 2003 and was to contain the following:

4           A. a designated employee to:

5                   (1). coordinate the program;

6                   (2). perform a risk assessment;

7                   (3). design, implement and regularly test safeguard  
8                   controls;

9                   (4). monitor service providers and enter into contracts  
10                   that require service providers to implement and  
11                   maintain appropriate safeguards; and

12                   (5). evaluate and adjust the program as necessary.

13           19. In 2007, the above named Respondents had a two page policy entitled  
14           "Information Security". This policy briefly described technical  
15           safeguards in place, but provided no other specific administrative  
16           or physical safeguards in place, nor did it contain any of the  
17           required elements as described above.

18           20. The above named Respondents also do not have safeguards in place to  
19           secure consumers' non-public personal information.

20           21. During the February 12, 2007 examination, there was no one at the  
21           front desk or immediate area in Respondent First Call Mortgage's  
22           principal office. After waiting a few minutes, the Examiner  
23           proceeded to walk throughout the principal office undetected.

1        22. The Examiner located two small offices labeled "closing rooms".  
2        Neither "closing room" contained any locks but contained numerous  
3        boxes of old closed and denied/withdrawn files, some of which were  
4        labeled as New Hampshire borrowers.

5        23. As the Examiner continued undetected through the principal office,  
6        the Examiner noted that all offices and cubicles contained non-  
7        public personal information such as borrower social security  
8        numbers and bank account numbers in plain view on and around the  
9        desks. Some offices contained borrower information scattered on the  
10       floor and under desks.

11       24. Since Respondent First Call Mortgage's employees failed to shut off  
12       or log off their individual computers, the Examiner was able to  
13       gain access to the individual computer of three employees (labeled  
14       herein as Employee A, B, and C).

15       25. Employee C's computer contained an excel spreadsheet on the  
16       computer's desktop labeled "Patty's Passwords", which contained  
17       passwords for all commonly used programs, including Respondent  
18       First Call Mortgage's loan software. As a result, the Examiner was  
19       able to gain access to multiple amounts of confidential  
20       information.

21       26. The above named Respondents utilized shred bins situated near  
22       common areas containing copiers and facsimile machines. Documents  
23       that are to be shredded are put in the bin and are disposed of by a  
24       third party data destruction service. Both bins were observed as  
25       half full and the bins did not have padlocks securing them, thus

1           allowing anyone the ability to access the documents therein.

2           27. The above mentioned observations and concerns were addressed and  
3           discussed with Respondent Donovan and Respondent McFadden, in  
4           separate meetings on February 12, 2007.

5           28. The examination continued the next day (February 13, 2007).

6           29. When the Examiner arrived in the morning, the front doors to the  
7           office were unlocked and once again there was no one present at the  
8           front desk. The Examiner again had free access to the building and  
9           was able to freely roam in and out of the office and cubicles.

10          30. The Examiner was able to locate two additional file rooms. Both of  
11          these offices had key locks but were not secured at the time of  
12          inspection and presumably left unlocked overnight.

13          31. Additionally, there was an open cubicle area that had approximately  
14          a dozen boxes of consumer loan files that were left unattended and  
15          unsecured.

16          32. Respondent Donovan responded to the 2007 Report of Examination.

17          33. The above named Respondents (in a letter from Respondent Donovan  
18          dated May 18, 2007) indicated Respondent Donovan has reviewed all  
19          of the Department's "comments and observations and has implemented  
20          corrective action, as well as amendments".

21          34. On or about July 16, 2008, Respondent Donovan verbally indicated  
22          to the Department's Examiner who conducted the 2007 examination and  
23          July 14, 2008 Department examination about certain safeguarding  
24          procedures.

35. However, Respondent Donovan went on to verbally indicate that there is no written information security program in place, other than the technical safeguards provided during the examination.

36. Respondent First Call Mortgage's program does not identify an employee or employees to coordinate the program.

37. Respondent First Call Mortgage failed to provide any documentation evidencing a company-wide risk assessment.

38. Respondent First Call Mortgage utilizes an over-simplified safeguarding policy and could not provide any documentation of internal audits that had been performed.

39. Respondent First Call Mortgage failed to provide any contracts for third party providers.

40. Respondent First Call Mortgage does not appear to have evaluated or adjusted the program since its inception but has admitted to the Department's observations herein.

41. The lack of formal written policies concerning safeguarding and security were also identified in the September 12, 2005 examination, which Respondents have since failed to create and implement.

**Violation of RSA 397-A:13, I Failure to File Accurate Annual Report (1 Count):**

**Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (1 Count):**

42. Paragraphs 1 through 41 are hereby realleged as fully set forth herein.

1 43. The annual report the above named Respondents filed for calendar  
2 year 2006 was inaccurate.

3 44. The annual report in question disclosed the number of brokered  
4 first mortgage loans and the number of subordinate lien loans.  
5 However, a review of the Annual Report work papers for calendar  
6 year 2006 revealed that the reported figures were table funded  
7 loans and did not include any of the total brokered loans in 2006.

8 45. The above named Respondents have admitted to the Department's  
9 observations herein. The above named Respondents (in a letter from  
10 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan  
11 has reviewed all of the Department's "comments and observations and  
12 has implemented corrective action, as well as amendments".

13 46. Inaccurate filing of an annual report was the subject of the  
14 previous Department examination dated September 12, 2005, as well.

15 47. Based on the September 12, 2005 Department, the 2004 Annual Report  
16 included investment properties when they are to be excluded from  
17 such report.

18 48. Further, Respondent Donovan was omitted from the list of senior  
19 officers on the 2004 Annual Report.

20 49. The above named Respondents have admitted to the Department's  
21 observations herein. The above named Respondents (in a letter from  
22 Respondent Donovan dated January 26, 2006) indicated Respondent  
23 Donovan would be "within 21 days, [Respondent Donovan] would be  
24 refilling [sic] 2004 annual report with corrected information".  
25

Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

C.F.R. Section 3500.14(b) via RSA 397-A:2,III (41 Counts):

Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

C.F.R. Section 3500.14(d) via RSA 397-A:2,III (41 Counts):

Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (41  
Counts):

Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (30  
Counts):

50. Paragraphs 1 through 49 are hereby realleged as fully set forth  
herein.

51. The above named Respondents published an advertisement in *Homes and  
Land of Greater New Hampshire*, a real estate booklet, for which  
Respondents share an advertisement with a real estate broker named  
NH Home Team H.B.N. Realty.

52. NH Home Team H.B.N. Realty received an invoice for two pages in the  
magazine, for which Respondents reimbursed NH Home Team H.B.N.  
Realty for one page.

53. On February 12, 2007, Respondent Donovan made representations to  
the Department's Examiner that the content of Respondents' portion  
of the advertisement is the same as demonstrated in Volume 10,  
Number 5 of *Homes and Land of Greater New Hampshire*.

54. Although Respondents utilized space on two pages (that combined is  
less than one page), Respondents reimbursed NH Home Team H.B.N.  
Realty for the full cost of a one page advertisement.



1 55. Providing "things of value" to a realtor was an observation and  
2 concern of a previous examinations of Respondent First Call  
3 Mortgage.

4 56. Providing "things of value" is prohibited by the Real Estate  
5 Settlement Procedures Act.

6 57. The above named Respondents have admitted to the Department's  
7 observations herein. The above named Respondents (in a letter from  
8 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan  
9 has reviewed all of the Department's "comments and observations and  
10 has implemented corrective action, as well as amendments".

11 58. Providing a "thing of value" was the subject of the previous  
12 Department examination dated September 12, 2005, as well.

13 59. In the September 12, 2005 examinations, Respondents published an  
14 advertisement several times in *Home and Land*, a real estate  
15 booklet, for which it shared an advertisement with a real estate  
16 broker, NH Home Team, H.B.N Realty, which appears to be the same  
17 realtor as mentioned from the 2007 examination.

18 60. Although Respondent First Call Mortgage utilized one half of one  
19 page, it reimbursed NH Home Team. H.S.N. Realty for the full cost  
20 of a two page advertisement.

21 61. On September 13, 2005, Respondent Donovan represented to the  
22 Department's Examiner that this is a long-standing practice with  
23 her company, and it occurs with another real estate broker in  
24 Massachusetts. Respondent Donovan subsequently provided the  
25 Department with a check register and six months of advertisement

1 invoices that further document the practice. Together, there appear  
2 to be at least thirty violations of this illegal practice.

3 62. The above named Respondents have admitted to the Department's  
4 observations herein. The above named Respondents (in a letter from  
5 Respondent Donovan dated January 26, 2006) simply stated "all  
6 advertising invoices now are approved by senior management with a  
7 copy of [sic] ad attached. No payments for third parties are  
8 approved. Then invoice is submitted to a/p for payment." Yet, as  
9 alleged above, Respondents violated these provisions once again  
10 based on evidence discovered from the February 2007 examination.

11 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

12 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA

13 397-A:2,III (8 Counts):

14 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

15 C.F.R. Section 3500.7, Appendix B, Illustration 13 and Appendix C via RSA

16 397-A:16, I (8 Counts):

17 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (8

18 Counts):

19 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (3 Counts):

20 Violation of RSA 397-A:6, I Failure to Supervise (8 Counts):

21 Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (3

22 Counts):

23 63. Paragraphs 1 through 62 are hereby realleged as fully set forth  
24 herein.  
25

1 64. A consumer's file from April 2006 contained a HUD Settlement  
2 Statement that disclosed a yield spread premium was collected from  
3 the lender in the amount of \$7,297.50.

4 65. A review of the consumer's signed Good Faith Estimate revealed that  
5 no yield spread premium was disclosed, therefore, the Respondents  
6 are not entitled to the \$7,297.50.

7 66. Failing to disclose the yield spread premium was a concern in the  
8 past two Department examinations.

9 67. The above named Respondents have admitted to the Department's  
10 observations herein. The above named Respondents (in a letter from  
11 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan  
12 has reviewed all of the Department's "comments and observations and  
13 has implemented corrective action, as well as amendments".

14 68. These are violations that were previously observed in the September  
15 12, 2005 Department Examination.

16 69. Four loan files from the September 12, 2005 examination revealed  
17 that the yield spread premium was not disclosed on the Good Faith  
18 Estimate.

19 70. The above named Respondents have admitted to the Department's  
20 observations herein. The above named Respondents (in a letter from  
21 Respondent Donovan dated January 26, 2006) simply stated "In-house  
22 quality assurance checklist has been implemented and audits are  
23 being conducted of [on] a monthly basis to ensure that is being  
24 completed on all loans."

1 71. The March 17, 2004 Department examination of Respondent First Call  
2 Mortgage also revealed the same observation: failure to disclose  
3 yield spread premiums on the Good Faith Estimate.

4 72. Respondent Donovan's June 1, 2004 response to the March 17, 2004  
5 Department examination was Respondent First Call Mortgage "has  
6 changed to disclose a range i.e. \$1,000 - \$3,000 if not locked on  
7 the GFE at time of application but if locked we have implemented a  
8 certain line items to disclosure [sic] proper YSP being made."

9 73. The July 14, 2008 Department examination revealed that two files  
10 contained Good Faith Estimates that disclosed "YSP to FCMC", but  
11 with no dollar amount or ranges. The HUD Settlement Statements  
12 subsequently disclosed the actual amount in yield spread premiums  
13 collected at closing.

14 74. A third file found during the July 14, 2008 Department examination  
15 revealed the yield spread premium as "0-2%", with no corresponding  
16 dollar amount.

17 Violation of RSA 397-A:5, III(a) (1 Count):

18 Violation of RSA 397-A:16, IV Unauthorized Retention of Commissions for  
19 Services Rendered (Respondents must forfeit fees and commissions received for  
20 loans processed and closed as related to this Portsmouth Branch Office) (1  
21 Count):

22 75. Paragraphs 1 through 74 are hereby realleged as fully set forth  
23 herein.

24 76. Respondent Donovan made representations throughout the February 12,  
25 2007 Department examination that it was Respondents' intentions to

1 open an additional branch in New Hampshire, specifically on Fleet  
2 Street in Portsmouth, New Hampshire.

3 77. Respondent Donovan further indicated that she was waiting for  
4 fingerprint cards for the branch manager before submitting the  
5 branch application.

6 78. Review of the Respondents' organizational chart in 2007 showed that  
7 Respondent Kesler was the Portsmouth branch's Branch Manager and  
8 there were three loan officers associated with this Portsmouth  
9 branch.

10 79. On February 22, 2007, two of the Department's Examiners went to the  
11 155 Fleet Street, Portsmouth, NH location, which contained  
12 individual offices with a "shared receptionist".

13 80. The Department's Examiners asked this "shared receptionist" for  
14 First Call Mortgage Company, Inc. and were told he was with a  
15 client. The Department's Examiners subsequently left the premises  
16 with a business card for IOS Business Centers.

17 81. At approximately 2:00 p.m. on the same day, the Department's  
18 Examiner-In-Charge contacted IOS Business Centers, spoke with a  
19 woman who identified herself as Emily and asked for First Call  
20 Mortgage Company, Inc. Emily told the Department's Examiner-In-  
21 Charge that the gentleman was away from his desk and transferred  
22 the call to Respondent Kesler's voicemail.

23 82. The Department's records show that the Department received a branch  
24 application on or about February 26, 2007, which is four days after  
25 the Department's discussions with Respondent Donovan.

1 83. The above named Respondents have admitted to the Department's  
2 observations herein. The above named Respondents (in a letter from  
3 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan  
4 has reviewed all of the Department's "comments and observations and  
5 has implemented corrective action, as well as amendments".

6 84. Respondents cannot, pursuant to RSA Chapter 397-A, retain any  
7 commissions or application fees stemming from loans derived from  
8 the Portsmouth, NH branch office when it was unlicensed.

9 Violation of RSA 397-A:10, II Failure to Update Information on File with

10 Commissioner (3 Counts):

11 Violation of RSA 397-A:10, IV Failure to Update Information on File with

12 Commissioner (2 Counts):

13 85. Paragraphs 1 through 84 are hereby realleged as fully set forth  
14 herein.

15 86. Respondent First Call Mortgage was formerly owned by both  
16 Respondent McFadden (as 95% owner) and Respondent Donovan (as 5%  
17 owner).

18 87. However, the July 14, 2008 Department examination revealed that the  
19 current principal owners (10% or more ownership), as of August 24,  
20 2007, are as follow:

- 21 a. Respondent McFadden (50% owner);
- 22 b. Respondent Vanderheiden (25% owner); and
- 23 c. Respondent Mr. and Mrs. Lynch (13%).

24 88. The remaining are all minority owners and Respondent Donovan is no  
25 longer an owner of Respondent First Call Mortgage.

1 89. On or about August 19, 2008, the Department received notice of the  
2 new owners.

3 Violation of RSA 397-A:10, IV Failure to Update Information on File with

4 Commissioner (2 Counts):

5 90. Paragraphs 1 through 89 are hereby realleged as fully set forth  
6 herein.

7 91. The above named Respondents failed to notify the Department that  
8 Renee Keefe, Branch Manager of the Bedford, NH office, was no  
9 longer employed with the company effective August 31, 2006.

10 92. In a discussion with Respondent Donovan at the February 12, 2007  
11 examination, the Department's Examiner was informed that Respondent  
12 Lesmerises has been recently hired to replace Ms. Keefe.

13 93. Respondents failed to notify the Department of Respondent  
14 Lesmerises's hiring nor provide the required documentation needed  
15 for Respondent Lesmerises.

16 94. The above named Respondents have admitted to the Department's  
17 observations herein. The above named Respondents (in a letter from  
18 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan  
19 has reviewed all of the Department's "comments and observations and  
20 has implemented corrective action, as well as amendments".

21 Violation of RSA 397-A:12, IV Violation of Standard Business Practice (3

22 Counts):

23 95. Paragraphs 1 through 94 are hereby realleged as fully set forth  
24 herein.

1 96. In instances wherein a consumer has a balloon note, the licensee is  
2 required to provide a balloon note disclosure to all borrowers who  
3 apply for loan with a balloon note provision.

4 97. There are three such loan files (Consumer B, Consumer C, and  
5 Consumer D) that are missing this required balloon note disclosure.

6 98. The above named Respondents have admitted to the Department's  
7 observations herein. The above named Respondents (in a letter from  
8 Respondent Donovan dated May 18, 2007) indicated Respondent Donovan  
9 has reviewed all of the Department's "comments and observations and  
10 has implemented corrective action, as well as amendments".

11 **Violation of RSA 397-A:6, I Failure to Supervise (1 Counts):**

12 **Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):**

13 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):**

14 99. Paragraphs 1 through 98 are hereby realleged as fully set forth  
15 herein.

16 100. On the morning of February 13, 2007, the Examiner inspected the  
17 office of Jeff Sarkisian, a loan officer with Respondent First  
18 Call Mortgage. Mr. Sarkisian's office contained numerous  
19 documents, including two boxes of loan applications, from Drew  
20 Mortgage Associates located in Shrewsbury, Massachusetts.

21 101. Mr. Sarkisian made representations to the Examiner that he  
22 previously worked for Drew Mortgage Associates.

23 102. Mr. Sarkisian stated he was in the process of contacting his  
24 former clients.  
25



1 103.The taking of proprietary information from another company,  
2 especially non-public personal information such as loan  
3 applications containing social security numbers and account  
4 numbers, constitutes an unethical business practice.

5 104.The above named Respondents have admitted to the Department's  
6 observations herein. The above named Respondents (in a letter  
7 from Respondent Donovan dated May 18, 2007) indicated Respondent  
8 Donovan has reviewed all of the Department's "comments and  
9 observations and has implemented corrective action, as well as  
10 amendments".

11 Violation of RSA 397-A:6, I Failure to Supervise (2 Counts):

12 Violation of RSA 397-A:17, I(g) Failure to Supervise (2 Counts):

13 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (2 Counts):

14 Violation of RSA 397-A:14-a, I Misleading or Deceptive Advertisements (2  
15 Counts):

16 105.Paragraphs 1 through 104 are hereby realleged as fully set forth  
17 herein.

18 106.William Blanchard, a Senior Loan Officer employed by Respondent  
19 First Call Mortgage, sends out direct advertisements to potential  
20 borrowers.

21 107.These advertisements are sent out in plain white envelopes, with  
22 no return address or reference to the company on the envelope. In  
23 addition to the advertisement, a copy of Respondent First Call  
24 Mortgage's license is included.  
25

1 108.The Department is in receipt of two such envelopes in which the  
2 United States Post Office was unable to deliver, and as a result,  
3 were returned to the Department for lack of a better return  
4 address.

5 109.These advertisements are of poor quality, making the advertising  
6 disclosure unreadable and thus, misleading or deceptive.

7 110.The above named Respondents have admitted to the Department's  
8 observations herein. The above named Respondents (in a letter  
9 from Respondent Donovan dated May 18, 2007) indicated Respondent  
10 Donovan has reviewed all of the Department's "comments and  
11 observations and has implemented corrective action, as well as  
12 amendments".

13 **Violation of RSA 397-A:14-a, III Failure to Proper and Required Disclosure**

14 **(1 Count):**

15 111.Paragraphs 1 through 110 are hereby realleged as fully set forth  
16 herein.

17 112.Respondent First Call Mortgage's website, www.ftmc.net, failed to  
18 include the required disclosure "Licensed by the New Hampshire  
19 banking department."

20 113.The above named Respondents have admitted to the Department's  
21 observations herein. The above named Respondents (in a letter  
22 from Respondent Donovan dated May 18, 2007) indicated Respondent  
23 Donovan has reviewed all of the Department's "comments and  
24 observations and has implemented corrective action, as well as  
25 amendments".

Violation of RSA 397-A:14-a,I via RSA 397-A:2, II Mortgage Loans Brokered Do

Not Comply with Other New Hampshire State Law (1 Count):

Violation of RSA 397-A:14-a,I via RSA 397-A:2, III Persons Subject to or

Licensed by RSA Chapter 397-A Must Comply with Other New Hampshire State Law

(1 Count):

114.Paragraphs 1 through 113 are hereby realleged as fully set forth herein.

115.The above named Respondents engaged in the brokering and lending of mortgage loans secured by New Hampshire property and therefore must comply with the rules and regulations of the State of New Hampshire.

116.Consumer E's file contained a "Disclosure Required by Massachusetts General Laws Chapter 184, Section 17B" and Respondent First Call Mortgage's "Mortgage Lender Disclosures Required by the Attorney General's Consumer Protection Regulations."

117.The above named Respondents should have excluded these provisions in any disclosures that refer to laws and regulations that do not apply to New Hampshire borrowers.

118.The above named Respondents have admitted to the Department's observations herein. The above named Respondents (in a letter from Respondent Donovan dated May 18, 2007) indicated Respondent Donovan has reviewed all of the Department's "comments and observations and has implemented corrective action, as well as amendments".

Violation of RSA 397-A:6, I Failure to Supervise (1 Count):

Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):

Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):

Violation of RSA 397-A:14-a, I Misleading or Deceptive Advertisements (2 Counts):

Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (1 Count):

119.Paragraphs 1 through 118 are hereby realleged as fully set forth herein.

120.Respondent First Call Mortgage's employees, Tami and Derrick Heins, operate a website entitled www.heinsmortgage.com .

121.In conversations with Respondent Donovan on February 21, 2007, the Department's Examiner discovered that the website has no affiliation with the company and Respondent Donovan does not review the content on the website, although it specifically states that the individuals are employees of First Call Mortgage Company.

122.The above named Respondents are responsible for the supervision of Respondent First Call Mortgage's employees and agents but do not appear to have the appropriate controls in place in reference to the above mentioned website.

123.The above named Respondents have admitted to the Department's observations herein. The above named Respondents (in a letter from Respondent Donovan dated May 18, 2007) indicated Respondent Donovan has reviewed all of the Department's "comments and observations and has implemented corrective action, as well as

amendments".

124.The advertisement with www.heinsmortgage.com had still not been corrected as of the July 14, 2008 Department examination; therefore, this is a repeat violation.

**Violation of RSA 397-A:5, II(d) Failure to Notify Department of Loan**

**Originators (5 Counts):**

**Violation of RSA 397-A:10, IV Failure to Update Information on File with**

**Commissioner (5 Counts):**

125.Paragraphs 1 through 124 are hereby realleged as fully set forth herein.

126.The findings herein are as a result of the September 12, 2005 Department examination.

127.Neither the Department nor the Commissioner was notified of the employment dates of five mortgage loan originators.

128.The above named Respondents have admitted to the Department's observations herein. The above named Respondents (in a letter from Respondent Donovan dated January 26, 2006) indicated that enclosed are the "missing dates for employees".

**Violation of RSA 397-A:10, I Conducting Business under an Unauthorized Trade**

**Name or Name (2 Counts):**

129.Paragraphs 1 through 128 are hereby realleged as fully set forth herein.

130.The Department's Examiners discovered (in the September 12, 2005 Examination) that the Respondents were conducting business under the unlicensed trade names of "First Call Mortgage" and "First

1           Call Mortgage, Inc.".

2           131.The above named Respondents have admitted to the Department's  
3           observations herein. The above named Respondents (in a letter  
4           from Respondent Donovan dated January 26, 2006) indicated that the  
5           "company logo has been revised to read First Call Mortgage Company  
6           Inc.".

7           **Violation of NH Administrative Rule Ban 2505.01, which implements RSA 397-**

8           **A:16 Failure to Disclose Rate Lock Investor (6 Counts):**

9           132.Paragraphs 1 through 131 are hereby realleged as fully set forth  
10          herein.

11          133.In the September 12, 2005 Department examination, Respondent First  
12          Call Mortgage appeared to lock interest rates with investors but  
13          did not disclose this relationship to the borrowers on the rate  
14          lock agreement forms.

15          134.There were six such files that did not disclose the investor which  
16          locked the interest rate.

17          135.The above named Respondents have admitted to the Department's  
18          observations herein. The above named Respondents (in a letter  
19          from Respondent Donovan dated January 26, 2006) indicated that the  
20          "rate lock form now discloses the investor name funding the loan."

21  
22  
23                           [REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]  
24  
25

Violation of NH Administrative Rule Ban 2408.03, which implements RSA 397-

A:14, III Wrong Loans Contain Daily Simple Interest (7 Counts):

Violation of RSA 397-A:6, I Failure to Supervise (7 Counts):

Violation of RSA 397-A:12, VIII Failure to Correct Reported Deficiencies (1  
Count):

136.Paragraphs 1 through 135 are hereby realleged as fully set forth  
herein.

137.Licensees must give consumers a daily simple interest disclosure  
at the time of application for a loan containing a daily simple  
interest.

138.Borrowers applying for loans that do not contain daily simple  
interest provisions should not be given the disclosures.

139.At the September 12, 2005 examination, no files were reviewed that  
contained daily simple interest provisions; however, Respondents  
appeared to have given the disclosure to all borrowers, evidenced  
in six files.

140.The above named Respondents have admitted to the Department's  
observations herein. The above named Respondents (in a letter  
from Respondent Donovan dated January 26, 2006) indicated that the  
"Daily Simple Interest form removed in template. Has only been  
added to Equity loan templates."

141.The Department observed the same violation (including the Daily  
Simple Interest Disclosures in loan files that did not require  
them) during the July 14, 2008 Department examination.

Violation of the Equal Credit Opportunity Act and Regulation B, 12 C.F.R.

Section 202.9(a)(2) via RSA 397-A:2,III (4 Counts):

Violation of the Equal Credit Opportunity Act and Regulation B, 12 C.F.R.

Section 202.9(b)(1) via RSA 397-A:2,III (4 Counts):

Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (4 Counts):

142.Paragraphs 1 through 141 are hereby realleged as fully set forth herein.

143.In the September 12, 2005 examination, review of the denied/cancelled files indicated that the adverse action notices failed to identify the federal agency that administers compliance with the law concerning this creditor (Respondent First Call Mortgage) in four files.

144.The above named Respondents have admitted to the Department's observations herein. The above named Respondents (in a letter from Respondent Donovan dated January 26, 2006) simply supplied the address "for the Federal Agency on the Credit Denial Form".

Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

C.F.R. Section 3500.14(c) via RSA 397-A:2,III (1 Count):

Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (1 Count):

145.Paragraphs 1 through 144 are hereby realleged as fully set forth herein.

146.In the September 12, 2005 examination, the Department's examiners discovered that the HUD-1 Settlement Statement for the Consumer F file contained and \$89.00 fee to "Record 2<sup>nd</sup> Mortgage".



1 147. Review of this "piggy back" second mortgage Home Equity Line Of  
2 Credit Agreement and Disclosure revealed that the \$89.00 recording  
3 fee, along with all the other closing costs, was paid by Citibank,  
4 F.S.B. This fee charged Consumer must therefore be refunded to  
5 Consumer F.

6 148. The above named Respondents have admitted to the Department's  
7 observations herein. The above named Respondents (in a letter  
8 from Respondent Donovan dated January 26, 2006) simply asked if  
9 the fee needs to be refunded.

10 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

11 C.F.R. Section 3500.2 via RSA 397-A:2, III (6 Counts):

12 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24

13 C.F.R. Section 3500.8 via RSA 397-A:2, III (6 Counts):

14 Violation of RSA 397-A:17, I(1) Violation of Federal Laws and Rules (6  
15 Counts):

16 149. Paragraphs 1 through 148 are hereby realleged as fully set forth  
17 herein.

18 150. For loans originated by mortgage brokers (which mortgage bankers  
19 are referred to in the federal laws when not funding the loan  
20 themselves) in a table funding transaction, the Lender is the  
21 person to whom the obligation is initially assigned at or after  
22 settlement.

23 151. Based on the September 12, 2005 examination, the majority of  
24 Respondent First Call Mortgage's loans appear to be table-funding  
25 transactions, which fail to disclose the investor providing funds

1 as the Lender in Section F of the HUD Settlement Statement.

2 152.Six such files failed to include these required disclosures.

3 153.The above named Respondents have admitted to the Department's  
4 observations herein. The above named Respondents (in a letter  
5 from Respondent Donovan dated January 26, 2006) simply stated that  
6 as of "September 22, 2005, the disclosure on the HUD-1 page has  
7 disclosed the investor funding the loan."

8 Violation of Title 18 U.S.C. Section 1001, et seq. via RSA 397-A:2,III (1  
9 Count):

10 Violation of RSA 397-A:17,I(1) Violation of Federal Laws and Rules (1 Count):

11 Violation of RSA 397-A:17,I(f) Violation of Federal Laws and Rules (1 Count):

12 154.Paragraphs 1 through 153 are hereby realleged as fully set forth  
13 herein.

14 155.On June 14, 2007, Respondents took an application for Consumer G  
15 to refinance Consumer G's home. The location (Location A) was  
16 disclosed as the borrower's primary residence. The loan  
17 ultimately closed on or about July 24, 2007 as a primary  
18 residence.

19 156.Also on June 14, 2007, Respondents took another application for  
20 Consumer G to purchase a property in Location B. The occupancy  
21 status on this file was also disclosed as a primary residence.  
22 The loan ultimately closed on July 16, 2007 as a primary  
23 residence.

1 157. Respondent Donovan provided the Department's Examiner a copy of a  
2 November 13, 2007 email from a John Harding to Respondent Donovan,  
3 which indicated that Consumer G's two loans both were considered  
4 primary residences and "`legit' when they were done".

5 158. Despite Mr. Harding's response, Respondents were aware that two  
6 loans were originated at the same time for two different  
7 properties, one of which was erroneously disclosed as a primary  
8 residence.

9 159. During the July 14, 2008 Department examination, Respondent  
10 Donovan provided the Department's Examiner information relative to  
11 a civil suit filed against Respondent First Call Mortgage for  
12 breach of contract. The legal suit was brought forth relative to  
13 the early payment default and the misrepresentation of occupancy  
14 for the Consumer G loan that closed on July 24, 2007.

## 15 **II. ISSUES OF LAW**

16 The staff of the Department, alleges the following issues of law:

- 17 1. The Department realleges the above stated facts in paragraphs 1  
18 through 159 as fully set forth herein.
- 19 2. The Department has jurisdiction over the licensing and regulation  
20 of persons engaged in mortgage banker or broker activities pursuant  
21 to NH RSA 397-A:2 and RSA 397-A:3.
- 22 3. RSA 397-A:3 requires those in the business of making or brokering  
23 mortgage loans secured by real property located in this state, and  
24 not exempt from licensure, to obtain a license from the Department.  
25

- 1        4. RSA 397-A:2, II requires any mortgage loans made or brokered under  
2        RSA Chapter 397-A to be further governed by any other applicable  
3        laws of the State of New Hampshire.
- 4        5. In 2005, Ban Rule 2408.03 (which implements RSA 397-A:14-a, III)  
5        provided that licensees are to provide daily simple interest  
6        disclosures only on loans containing daily simple interest  
7        provisions. Each of the above named Respondents violated this  
8        provision on at least seven occasions as alleged above.
- 9        6. Licensees are required to provide a balloon note disclosure to all  
10       borrowers who apply for loan with a balloon note provision. See Ban  
11       Rule 2504.01.
- 12       7. In 2005, Ban Rule 2505.01 (which implements RSA 397-A:16) required  
13       disclosure of investors to the borrowers on rate lock commitments  
14       by the licensees. Each of the above named Respondents violated  
15       this provision on at least six occasions as alleged above.
- 16       8. RSA 397-A:2, III requires persons subject to or licensed under RSA  
17       Chapter 397-A to abide by applicable federal laws and regulations,  
18       the laws and rules of the State of New Hampshire, and the orders of  
19       the Commissioner. Any violation of such law, regulation, order, or  
20       rule is a violation of RSA Chapter 397-A. Each of the above named  
21       Respondents violated this statute on at least 160 occasions as  
22       alleged above.
- 23       9. RSA 397-A:5, II(d) provided in 2005 and currently provides that  
24       each applicant shall provide a list of all individuals, and the  
25       address of the work location of each such individual, who will act

1 as originators for the licensee. Each of the above named  
2 Respondents violated this statute on at least five occasions as  
3 alleged above.

4 10. RSA 397-A:5, III provides that licenses must be issued for mortgage  
5 lending or mortgage brokering activity occurring in a location in  
6 this state that is separate from the licensee's principal place of  
7 business and shall be referred to as a "branch office". Each of the  
8 above named Respondents violated this provision on at least one  
9 occasion as alleged above. Additionally, pursuant to RSA 397-A:16,  
10 IV and RSA 397-A:21, Respondents must forfeit all application fees  
11 and commissions stemming from loans processed and closed as related  
12 to those from the Portsmouth, NH branch office when not properly  
13 licensed.

14 11. RSA 397-A:6, I mandates that licensees supervise their employees,  
15 agents, loan originators, and branch offices. Each of the above  
16 named Respondents failed to adequately supervise and therefore  
17 violated this statute on at least nineteen occasions as alleged  
18 above.

19 12. RSA 397-A:10, I provides that no licensee shall conduct the  
20 business of a mortgage banker or mortgage broker under a trade name  
21 or any other name different from the name stated in its principal  
22 office license or branch office license without immediately  
23 notifying the Commissioner, who shall then amend the license  
24 accordingly. Each of the above named Respondents violated this  
25 statute on at least two occasions as alleged above.

1 13. RSA 397-A:10, II provides that licensees shall submit written  
2 notification to the Department of the addition or deletion of a  
3 principal and shall provide the name and address of each new  
4 principal no later than 30 days after such change. Each of the  
5 above named Respondents violated this statute on at least three  
6 occasions as alleged above.

7 14. RSA 397-A:10, IV provides that persons licensed under RSA Chapter  
8 397 are under a continuing obligation to update information on file  
9 with the Commissioner. Each of the above named Respondents failed  
10 to update the Commissioner on at least nine occasions as alleged  
11 above.

12 15. RSA 397-A:12, IV provides that any agent of the Department may make  
13 a thorough examination into the business affairs of each licensee  
14 and shall report any violations of law, rule, or standard business  
15 practice to the Department. The above named Respondents violated  
16 this provision on at least three occasions as alleged above.

17 16. RSA 397-A:12, VIII provides that upon receipt of a written report  
18 of examination, the licensee shall have 30 days or such additional  
19 reasonable period as the Commissioner for good cause may allow.,  
20 within which to review the report, recommend any changes and set  
21 forth in writing the remedial course of action the licensee will  
22 pursue to correct any reported deficiencies outlined in the report.  
23 The above named Respondents violation this provision on at least 38  
24 occasions as alleged above.

1 17. RSA 397-A:13, I provides that a licensee shall file its annual  
2 report on or before February 1 each year concerning operations for  
3 the preceding year or license period ending December 31. Each of  
4 the above named Respondents violated this provision on at least one  
5 occasion as alleged above.

6 18. RSA 397-A:14-a, I provides that no licensee or other person shall  
7 advertise, print, display, publish, distribute or broadcast or  
8 permit to be advertised, printed, displayed, published,  
9 distributed, or broadcast in any manner whatsoever any statement or  
10 representation with regard to the rates, terms, or conditions for  
11 the lending of money under the provisions of this chapter, which is  
12 false, misleading, or deceptive. Each of the above named  
13 Respondents violated this statute on at least three occasions as  
14 alleged above.

15 19. RSA 397-A:14-a, III provides that any advertisement, printing,  
16 display, publication, distribution, or broadcast offering loans  
17 governed by this chapter shall clearly and conspicuously contain  
18 the disclosure, "Licensed by the New Hampshire banking department".  
19 Failure to comply with the provisions of this paragraph shall  
20 constitute sufficient cause for license revocation, suspension, or  
21 denial. Each of the above named Respondents violated this statute  
22 on at least one occasion as alleged above.

23 20. RSA 397-A:16, I provides that licensees may charge fees and points  
24 for services rendered in conjunction with the origination, closing,  
25 and servicing of loans; provided, however, that the licensee issues

1 a written disclosure to the borrower stating the estimated amount  
2 and purpose of all fees and expenses within three business days of  
3 the receipt of a loan application. Each of the above named  
4 Respondents violated this provision on at least eight occasions as  
5 alleged above.

6 21. RSA 397-A:16, IV provides that only mortgage brokers and mortgage  
7 bankers licensed under the provisions of RSA Chapter 397 shall be  
8 entitled to retain commissions for services rendered. Respondents  
9 must refund any and all such commissions and application fees (per  
10 RSA 397-A:21) received or charged from loans processed relating to  
11 the Portsmouth, NH branch office when the branch office was  
12 unlicensed. Each of the above named Respondents violated this  
13 provision on at least one occasion as alleged above.

14 22. RSA 397-A:17, I(f) provides that licensees are prohibited from  
15 making fraudulent misrepresentations, circumvent or conceal,  
16 through whatever subterfuge or device, any of the material  
17 particulars or the nature thereof required to be stated or  
18 furnished to a borrower under the provisions of this chapter. Each  
19 of the above named Respondents violated this provision on at least  
20 one occasion as alleged above.

21 23. RSA 397-A:17, I(g) provides that licensees engaging in business in  
22 New Hampshire must supervise their agents, originators, managers or  
23 employees. Each of the above named Respondents violated this  
24 statute on at least four occasions as alleged above.  
25



1       24. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in  
2       New Hampshire are prohibited from engaging in unethical business  
3       practices. Each of the above named Respondents violated this  
4       statute on at least seven occasions as alleged above.

5       25. RSA 397-A:17,I(l) provides that licensees must abide by all federal  
6       laws or rules thereunder. The Gramm-Leach-Bliley Act, Title V,  
7       Sec. 501(a) states that it is the policy of the Congress that each  
8       financial institution has an affirmative and continuing obligation  
9       to respect the privacy of its customers and to protect the security  
10      and confidentiality of those customers' nonpublic personal  
11      information. The Gramm-Leach-Bliley Act, Title V, requires  
12      financial institutions to maintain the integrity of nonpublic  
13      personal information. Each of the above named Respondents violated  
14      this federal law on at least twenty-six occasions as alleged above.

15     26. 18 U.S.C. Section 1001, et seq., provides that except as otherwise  
16     provided in this section, whoever, in any matter within the  
17     jurisdiction of the executive, legislative, or judicial branch of  
18     the Government of the United States, knowingly and willfully (1)  
19     falsifies, conceals, or covers up by any trick, scheme, or device a  
20     material fact; (2) makes any materially false, fictitious, or  
21     fraudulent statement or representation; or (3) makes or uses any  
22     false writing or document knowing the same to contain any  
23     materially false, fictitious, or fraudulent or entry; shall be  
24     fined under this title, imprisoned not more than 5 years... Each of  
25     the above named Respondents violated this provision on at least

one occasion as alleged above.

27. The Equal Credit Opportunity Act and Regulation B, 12 C.F.R. Section 202.9(a)(2) requires a creditor (here Respondent First Call Mortgage) to notify the consumer in writing when an adverse action is taken against a loan applicant. The notification, among other information, shall include the name and address of the federal agency that administers compliance with respect to the creditor (here First Call Mortgage). Each of the above named Respondents violated this federal law on at least four occasions as alleged above.

28. The Equal Credit Opportunity Act and Regulation B, 12 C.F.R. Section 202.9(b)(1) requires a creditor (here Respondent First Call Mortgage) to give an ECOA Notice to the consumer when an adverse action is taken and must comply with The Equal Credit Opportunity Act and Regulation B, 12 C.F.R. Section 202.9(a)(2), as mentioned above. The notification, among other information, shall include the name and address of the federal agency that administers compliance with respect to the creditor (here First Call Mortgage). Each of the above named Respondents violated this federal law on at least four occasions as alleged above.

29. 16 C.F.R. Section 314.3 Standards for Safeguarding Customer Information, states that the licensee must develop, implement and maintain a comprehensive information security program that is written in or more readily accessible parts and contains administrative, technical and physical safeguards. Each of the

1           above named Respondents violated this federal law on at least one  
2           occasion as alleged above.

3           30. 16 C.F.R. Section 314.4(a), Standards for Safeguarding Customer  
4           Information, states that the licensee's information security  
5           program is required to designate an employee or employees to  
6           coordinate the program. Each of the above named Respondents  
7           violated this provision on at least one occasion as alleged above.

8           31. 16 C.F.R. Section 314.4(b), Standards for Safeguarding Customer  
9           Information, states that the licensee is required to perform and  
10          document a risk assessment. Each of the above named Respondents  
11          violated this provision on at least one occasion as alleged above.

12          32. 16 C.F.R. Section 314.4(c), Standards for Safeguarding Customer  
13          Information, states that the licensee is required to design,  
14          implement and regularly test safeguards in place. The Respondents  
15          have violated this provision on one occasion as alleged above.

16          33. 16 C.F.R. Section 314.4(d), Standards for Safeguarding Customer  
17          Information, states that the licensee is required to enter into  
18          contracts with third party providers to ensure those parties  
19          implement and maintain safeguards. Each of the above named  
20          Respondents violated this provision on at least one occasion as  
21          alleged above.

22          34. 16 C.F.R. Section 314.4(e), Standards for Safeguarding Customer  
23          Information, states that the licensee is required to evaluate and  
24          adjust the information security program. Each of the above named  
25          Respondents violated this provision on at least one occasion as

1           alleged above.

2           35. 24 C.F.R. Sections 3500.2 and 3500.8, Regulation X, Real Estate  
3           Settlement Procedures Act, provides that for loans originated by a  
4           mortgage broker that closes a federally related mortgage loan in  
5           its own name in a table funding transaction, the lender is the  
6           person to whom the obligation is initially assigned at or after  
7           settlement. Each of the above named Respondents violated this  
8           provision on at least six occasions by failing to provide the name  
9           of the Lender in Section F of the HUD Settlement Statement.

10          36. 24 C.F.R. Section 3500.14(b) and (d), Regulation X, Real Estate  
11          Settlement Procedures Act, provides that no person or entity shall  
12          give or accept any fee or "thing of value" for the referral of  
13          business. A "thing of value" includes, but is not limited to,  
14          monies, discounts and payments for another person's expenses. Each  
15          of the above named Respondents violated this provision on at least  
16          forty-one occasions as alleged above.

17          37. 24 C.F.R. Section 3500.14(c), Regulation X, Real Estate Settlement  
18          Procedures Act, provides that a charge by a person for which no or  
19          nominal services are performed or for which duplicative fees are  
20          charged is unearned fee and violates this section. Each of the  
21          above named Respondents has violated this provision on at least one  
22          occasion as alleged above.

23          38. RSA 397-A:18, I provides that the Department may issue a complaint  
24          setting forth charges whenever the Department is of the opinion  
25          that the licensee or person over whom the Department has

jurisdiction, has violated any provision of RSA 397-A or orders thereunder.

39. RSA 397-A:21,IV provides that any person who, either knowingly or negligently, violates any provision of Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws.

40. RSA 397-A:21,V provides that every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any other penalty provided for by law, be subject to suspension, revocation, or denial of any registration or license, including the forfeiture of any application fee, or the imposition of an administrative fine not to exceed \$2,500, or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal or civil penalties imposed.

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The staff of the Department requests the Commissioner take the following Action:

1. Find as fact the allegations contained in section I of this Staff Petition;
2. Make conclusions of law relative to the allegations contained in section II of the this petition;
3. Pursuant to RSA 397-A:17, order each of the above named Respondents to show cause why their license should not be revoked;
4. Pursuant to RSA 397-A:18, order each of the above named Respondents to immediately **Cease and Desist** from violations of this chapter;
5. Assess fines and administrative penalties in accordance with RSA 397-A:21, for violations of Chapter 397-A, in the number and amount equal to the violations set forth in section II of this Staff Petition;
6. Pursuant to RSA 397-A:16, IV and RSA 397-A:21, order the Respondents to refund any and all commissions and application fees received or charged from consumers from loans processed through the Portsmouth, NH branch office when it was unlicensed;
7. Pursuant to the Real Estate Settlement Procedures Act, order the Respondents to refund the yield spread premium of \$7,297.50 charged to Consumer A but not disclosed to Consumer A;
8. Pursuant to the Real Estate Settlement Procedures Act, order the Respondents to refund the \$89.00 duplicate recording fee charged to Consumer F; and

9. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

#### IV. RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

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Maryam Torben Desfosses  
Staff Attorney

9/24/08  
Date